

REMARKS

Favorable consideration and allowance of the present application are respectfully requested. Currently, claims 9-12 and 17-22 are pending in the present application, including independent claim 9. Claims 13-15 were previously cancelled.

In the Office Action, claims 9-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamaoka et al. (U.S. Patent Number 4,722,973) in view of Stehling et al. (U.S. Patent Number 5,382,631). All of the presently pending claims require an elastomeric polyolefin having a density of about 0.865 g/cm³ to about 0.889 g/cm³ and a peak melting point range of about 49° C to about 85° C. It is respectfully submitted that the references cited, either alone or in any proper combination, fail to teach or suggest the presently pending claims.

For instance, Yamaoka et al. does not describe an elastomeric polyolefin having a density of about 0.865 g/cm³ to about 0.889 g/cm³. Rather, as noted in the Office Action, Yamaoka et al. describes an ethylene alpha olefin copolymer rubber having a density of 0.863 g/cm³ or less, such as 0.862 g/cm³. See Examples 1 and 7.

Furthermore, even if the rubber blend of Yamaoka et al. did disclose the claimed ranges, it would not have been obvious to one of ordinary skill in the art at the time of the invention to have employed the rubber blend of Yamaoka et al. to form nonwoven fabrics in view of Stehling et al.

Stehling et al. describes that "in contrast to rubber blends" the "crystalline materials" described therein have "superior properties." Col. 2, line 59 – Col. 3, line 2. It was stated that the interpolymer blend components of Stehling et al. are "crystalline materials having high ethylene concentrations where the comonomer is randomly

distributed along the polymer backbone chain.” Id. In this manner, the random (non-tapered) molecules having high ethylene concentrations, and the blends of these components, are plastics rather than rubbers. Id. By sharp contrast, the soft segments of Yamaoka et al. are explicitly described as rubbers. It is improper to combine references where the references teach away from their combination. In re Grasselli, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983). Here, Stehling et al. teaches away from non-crystalline rubber blends. Thus, Stehling et al. teaches away from combination with the rubber blend of Yamaoka et al.

Furthermore, to the extent that Yamaoka et al. could be said to discuss the use of crystalline polyolefins, it is only if the “desired” performance “is not impaired.” Col. 7, lines 32-39. In this regard, Stehling et al. indicates crystalline polyolefins with melting points well outside of the claimed range as illustrated in Tables 7A and 7B which show melting points ranging from 99° C to 129° C. Thus, even though the Final Office Action claims that Yamaoka et al. describes a rubber blend having the claimed melting point range, it is reasonable to presume that use of crystalline polyolefins such as those described in Stehling et al. would modify such range, especially considering that the crystalline polyolefins are described in Stehling et al. as having higher melting points than those claimed. It is respectfully submitted that one of ordinary skill in the art would not have modified Stehling et al. with Yamaoka et al. in the manner suggested in the Final Office Action. Therefore, it is respectfully submitted that the presently pending claims patentably define over the cited references.

In response, the Office Action argues that “to use the particular blend of Yamaoka for a purpose for which such blends are known would have been obvious to

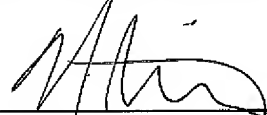
one of ordinary skill in the art." Page 4, April 30, 2009 Office Action. It was further stated that "[t]he person of ordinary skill in the art looking at the teachings of Stehling and Yamaoka would have recognized that the material of Yamaoka would have been useful for forming nonwoven fabrics." Id.

However, this statement ignores the fact that Stehling et al. teaches away from non-crystalline rubber blends. As such, it would not have been obvious to one of ordinary skill in the art to utilize the material of Yamaoka et al. in a nonwoven fabric, particularly when the reference cited for the motivation of such a modification teaches away from the material utilized in Yamaoka et al.

In summary, Applicants submit that the presently pending claims are patentably distinct over the cited references and are in complete condition for allowance. Should any issues remain after consideration of this response, however, than Examiner Cole is invited and encouraged to telephone the undersigned at her convenience.

Respectfully submitted,

DORITY & MANNING, P.A.



Neil M. Batavia

Registration Number: 54,599

P.O. Box 1449

Greenville, SC 29602

Telephone: (864) 271-1592

Facsimile: (864) 233-7342

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